IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1066 OF 2020
WITH
CRIMINAL APPLICATION NO.2089 OF 2020

Vilas S/o Bhiva Nikat … Applicant

VERSUS

The State of Maharashtra … RESPONDENT

…

Mr. Rahul R. Karpe, Advocate for the Applicant
Mrs.R. P. Gour, APP for the Respondent/State
Mr. S.S. Thombre for the Interveners

…

CORAM : M. G. SEWLIKAR, J.
(VACATION COURT)
DATE : 17.11.2020

PER COURT :

This is an application under Section 438 of Cr.P.C. for anticipatory bail.

2. Facts leading to this application are that the informant is the owner of land Gut No.66/2. It is alleged that the applicant got the sale deed of this land executed in the name of accused No.1-Dnyaneshwar Sheshrao Mohite and accused no.2 by getting one lady impersonated as the informant. The name of the applicant was disclosed during the interrogation of accused No.1. Accordingly, FIR came to be lodged against accused no.1 and accused no.2 on 30.01.2020. The said sale deed was alleged to be executed on 13.01.2020.

3. Heard Shri.R.R. Karpe learned counsel for the applicant and Smt.R.P. Gaur learned counsel for the Respondent/State.

4. Shri.R.R. Karpe argued that name of the applicant does not appear in the FIR. His name was revealed during interrogation of accused no.1. He submitted that for opening an account in the name of lady, accused no.1 requested him to identify the said lady and on the request of accused no.1, he identified the said lady. He submitted that he does not know that lady and accused no.1 and the applicant being the partners, the applicant believed accused no.1 and identified the said lady. He submitted that the sale deed is not executed in his name. He has no concern with the property. Therefore, his custodial interrogation is not necessary. He further submitted that the entire evidence is documentary in nature. Nothing is to be recovered from the applicant. In such cases, anticipatory bail ought to be granted as custodial interrogation is not required. He submitted that the informant and accused nos.1 and 2 have amicably settled the matter and compromise *pursis* also contains a clause that the present complaint will also be settled. However, the same is not yet settled. According to him, since the evidence is documentary in nature, and no document is to be recovered from him, the applicant deserves to be released on anticipatory bail.

5. Shri. R.R.Karpe learned counsel for the applicant placed reliance on the following cases:

(i) Ravindra Saxena Vs. State of Rajasthan in Criminal Appeal No.2406 of 2009 (arising out of SLP (Crl.) No. 2663 of 2009 decided on 15.12.2009.

(ii) A. Nazaar Vs. Inspector General of Registration, Santhome High Road, Karaikudi and Ors. in Writ Petition No.25252 of 2007 and M.P. No.1 of 2007.

(iii) Arnesh Kumar Vs. State of Bihar and Anr. in Criminal Appeal No.1277 of 2014 @ Special Leave Petition (CRL.) No.9127 of 2013.

(iv) Vishnu Gopalakrishnan Vs. State of Kerala and Anr. in Bail Application No.4459 of 2020.

(v) Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Ors. in Criminal Appeal No.2271 of 2020 (Arising out of SLP (Criminal) No.7615 of 2009) decided on 02.12.2020.

6. Smt.R.P. Gaur submitted that the applicant is a mastermind of the offence. The applicant is the person who introduced the unknown lady to be the informant and got the sale deed executed in the name of accused no.1 and accused no.2. She submitted that the applicant has siphoned off an amount over Rs.32,00,000/-. She submitted that the name and whereabouts of the lady are still not known. Without the interrogation of the applicant, name and whereabouts of the said lady will not be disclosed. She, therefore, prayed for the rejection of the application.

7. Perused the papers. The police papers show that an unknown lady impersonated the informant and the sale deed was got executed. During investigation, it revealed that in the name of the informant bank account was opened in Sanjivani Credit Society at Ambi Jalgaon. The applicant had identified impersonator of Nirmala Gandhi, the informant while opening the said account. During investigation, it was revealed that the Aadhar Card No.3961 2464 9146 used for identification of said lady is a bogus one as it was not registered with Unique Identification Authority of India (UIDAI). In Paragraph No.13 of the order of the learned Additional Sessions Judge, Shrigonda it is observed that extract of account opened in the name of the informant shows that accused No.1 transferred Rs.10,00,000/- by way of RTGS and accused No.2 transferred Rs.16,20,000/- by way of RTGS in the said account of the said impersonator of Nirmala Gandhi. This amount was withdrawn by cash or transferred by cheques to various persons having surname 'Nikat' who seems to be relatives of the applicant. It is true that the evidence is documentary in nature. However, who was that lady, who had impersonated the informant is still a mystery. The name of that lady is still not disclosed. According to the applicant, he does not know that lady as he was introduced to her by accused no.1 and now accused no.1 is taking undue advantage of the applicant having identified the said impersonator. From the account extract, it is clear that amount was

transferred to relatives of Nikat i.e. the present applicant. The applicant has identified the said lady. Therefore, unless the applicant is interrogated the name of that lady would not be disclosed. Therefore, all the above cases are not applicable to the facts of the instant case. Custodial interrogation of the applicant is necessary for the reason that the offence is serious in nature and also that the name of the impersonator is not yet revealed. It will be revealed only after custodial interrogation of the applicant. In this view of the matter, I am not inclined to release the applicant on bail. Hence, the following order:

ORDER

I. The application is hereby dismissed.

II. The criminal application for intervention is allowed.

(M. G. SEWLIKAR, J.)

Sameer